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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,711	11/12/2003	Guillaume Cassin	LOREAL, 3.0-046; OA02360/E	9477
95112	7590	07/07/2010	EXAMINER	
LOREAL Lerner, David, Littenberg, Krumholz & Mentlik, LLP 600 South Avenue West Westfield, NJ 07090			FUBARA, BLESSING M	
		ART UNIT	PAPER NUMBER	
		1618		
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		07/07/2010		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/706,711	<b>Applicant(s)</b> CASSIN, GUILLAUME
	<b>Examiner</b> BLESSING M. FUBARA	<b>Art Unit</b> 1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 22 April 2010.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,3,8-14,16-23,25-35 and 37-46 is/are pending in the application.
  - 4a) Of the above claim(s) 3 and 14, 16-22 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,8-13,23,25-35 and 37-46 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The examiner acknowledges receipt of request for extension of time, amendment and remarks filed 4/22/2010. Claims 1 and 33 are amended. Claims 1, 3, 8-14, 16-23, 25-35 and 37-46 are pending and of these, claims 3 and 14-22 are withdrawn from consideration.

#### *Response to Arguments*

2. Previous rejections, such as the rejection in view of the trademark POLYSILICONE-8, that are not reiterated herein are withdrawn in view of the amendment to claims 1 and 33 where POLYSILICONE-8 has been replaced by the chemical structure disclosed in paragraph [0024] that bridges pages 5 and 6. .

#### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 8-13, 23, 25-35 and 37-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Amended claims 1 and 33 recite “thiopropylene type” and “poly(meth)acrylic acid type.” It is however unclear as to what is covered by the “type” or what types of thiopropylene and polyacrylic acid or polymethacrylic acid; and as such the boundaries of protection sought for the various types of thiopropylene and polyacrylic acid or polymethacrylic acid are unclear and not

defined by the specification. This new rejection is necessitated by the amendment to claims 1 and 33.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 8-13, 23, 25-35 and 37-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6,090,376) in view of Nandagiri et al. (US 5,362,486).

8. Dubief discloses composition comprising at least one grafted silicone polymer in particle form dispersed in aqueous medium, amphiphilic polymer (abstract; column 1, lines 32-43; column 2, lines 21-27; column 5, lines 28-30; column 7, lines 5-7), water (column 6, line 64), vegetable, animal or synthetic oils or vitamins or surfactants (column 7, lines 8-13). The composition comprising the amphiphilic polymer, the grafted silicone is a tensioning polymer. The amphiphilic polymer is used in amounts of between 0.01 to 20 wt% (column 6, lines 59-62) and the amphiphilic polymer can be based on acrylic polymers (column 5, line 60 to column 6, line 56) with the acrylic polymers meeting claim 8-13. Exhibiting “a retraction of isolated stratum corneum ... in water is a property/characteristic of the tensioning polymer and the tensioning polymer of Dubief would have the same property/characteristic. Claim 1 requires

that the surfactant if present be present at amounts of less than 1% by weight relative to the total composition and the suggestion by Dubief that the additive surfactant be present at amounts of 0-20, with the lower limit of 0 being less than 1% suggestive that an amount of less than 1% can be used so that limitation brought from original claim 24 into claim 1 is met. The requirement that the surfactant be different from the amphiphilic polymer is also met because, Dubief discloses composition containing amphiphilic polymer and surfactant.

9. Claims 11, 12 and 23, 25-32 recite the amounts of the acrylic polymer/ionic amphiphilic polymer, tensioning polymer, fatty phase, surfactant and water. Dubief does not teach the exact amounts recited in those claims. The amount of the ionic amphiphilic polymer of Dubief at 0.01 to 20 wt% (column 6, lines 59-62) encompasses the claimed amount of the ionic amphiphilic polymer or acrylic polymer.

10. Dubief discloses composition comprising ionic amphiphilic polymer, tensioning polymer, water and oil as described above. The composition of Dubief is applied to the hair for treatment (abstract). The tensioning polymer of Dubief is a grafted silicone interpenetrating polymer as stated above.

11. Dubief does not teach polyurethane and polyacrylic as tensioning polymer as recited in claim 1 as one of the choices for the polymer. However, Nandagiri discloses composition comprising polyurethane-acrylate for bodifying hair (column 15, lines 13-62). Therefore, taking the two references together, it would have been obvious to use the polyurethane-acrylate tensioning interpenetrating polymer of Nandagiri in the composition of Dubief and expect to have a composition for treating hair as it relates to body, feel, styling and disentangling of the hair.

12. While Dubief suggests the use of additive surfactant polymer at 0-20%, Dubief does not specifically relate the amount of the surfactant to the total weight of the composition, and while these amounts are not exactly the same as those recited in the claims, the amounts recited in the claims would have been obvious because the person of ordinary skill in the art would have good reason to use various components of the composition in amounts that would provide composition that when applied to hair would effectively treat the hair as regards entangling/disentangling and smoothness and styling and feel. In the absence of unexpected results, the amounts recited in those claims are not inventive over the teaching of Dubief.

*Response to Arguments*

13. Applicant's arguments filed 4/22/2010 have been fully considered but they are not persuasive.

14. Applicant argues on pages 10 and 11 of the response (the remarks section) filed 4/22/2010 argues that polyurethane-acrylate polymer of Nandagiri is not an interpenetrating polymer network as recited in the pending claims because in the instant specification at paragraph [0016] at page 4, the term "interpenetrated polymer network" is "a blend of two interlaced polymers, obtained by simultaneous polymerization and/or crosslinking of two types of monomer, the blend obtained having a single glass transition temperature," that the ordinary skilled artisan would recognize that the process in Nandagiri in column 15, lines 13-25 would not produce interpenetrating polymer network. Applicant thereby states that the cited references do not teach tensioning polymer.

15. Response: The examiner disagrees because the claims have not recited how the interpenetrating polymer network of polyurethane and polyacrylic acid is made. While, page 4,

paragraph [0016] of the instant specification states how an interpenetrating polymer network is made, that process is not the only process. Specifically, according to one of the references cited in applicant's specification at page 4, paragraph [0017] (see US 6,465,001 at 13, lines 11-15 cited in applicant's specification at page 4 as having IPNs suitable for use in the present application) an interpenetrating polymer network can also be made by combining two monomers and allowing photopolymerization to polymerize one polymer into the other. Thus, the blend of polyurethane and acrylic acid in the presence of light would copolymerize and form an interpenetrating polymer network. Furthermore, Nandagiri teaches that the oligomer or prepolymer can polymerize in situ. With regards to applicant's argument that none of the cited references teaches tensioning polymer, it is noted that the grafted silicone polymer of Dubief meets the limitation of the grafted silicone polymer now recited in the claim.

16. Claims 1 and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6,090,376) in view of Nandagiri et al. (US 5,362,486) and further in view of Bara (US 20020193513 A1).

17. Dubief uses composition containing grafted silicone to treat hair or keratinous substances (abstract) as described above. Nandagiri is relied upon for teaching composition containing poly-urethane acrylate for bodifying hair as described above, so that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the tensioning polymer of Nandagiri in place of the tensioning grafted silicone polymer of Dubief with the expectation that the modified composition would successfully bodify hair. Thus, the combined composition would also be used to treat hair or keratinous substances. However, while the

combined composition is used to treat hair and bodily the hair, the combined teaching of Dubief and Nandagiri does not teach the limitations of claim 43.

18. But compositions containing polyacrylic acid or polyurethane polymers are known to provide tautness, slipperiness to the skins which does not dry out the skin (see the abstract; paragraphs [0010], [0058], [0059] and [0061] and claims 1, 16 and 19). The capability of providing tautness out irregularities of the skin such as wrinkles and fine lines according to Bara (abstract; paragraphs [0010], [0058], [0059] and [0061] and claims 1, 16 and 19).

19. Therefore, taking the teachings of Dubief and Nandagiri in view of Bara, one having ordinary skill in the art at the time the invention was made would reasonably expect that the application of the composition of Dubief and Nandagiri would effectively provide the anticipated tautness to the skin while smoothening the skin.

*Response to Arguments*

20. Applicant's arguments filed 4/22/2010 have been fully considered but they are not persuasive.

21. Applicant argues that because neither Dubief nor Nandagiri teaches the recited tensioning polymers and Bara does not remedy that deficiency, the rejection should be withdrawn.

22. Response: The examiner disagrees because as discussed above, the polymer of Nandagiri is interpenetrating and applicant has not shown that the polymer is not interpenetrating. There is more than one way of forming interpenetrating polymer network according to the references cited in applicant's specification at page 4, and the processes in those references are not limited to the process disclosed in paragraph [0016] of the specification at page 4 and referenced by

applicant in the remarks; further, the claims have not recited how the interpenetrating network is formed so that the structure formed by the claimed process may have been shown to be different from the structure of the polymer blend of Nandagiri.

23. Therefore, the rejections are maintained.

***Double Patenting***

24. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

25. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

26. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

27. Claims 1, 6-13, 23, 25-35 and 37-46 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No. 10/982,925. Although the conflicting claims are not identical, they are not patentably distinct from each other because the examined claims and the co-pending claims are concerned with compositions containing amphiphilic polymer, tensioning polymer, aqueous phase and oil phase for treating keratinous substances and for treating skin conditions.

28. Claims 1, 6-13, 23, 25-35 and 37-46 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 60-116 and of U.S. Patent No. and 1-59 of copending Application Nos. 10/591,583 and 10/573,579 respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because the acrylates of the 10/591,583 and 10/573,579 applications are homologs of the acrylates of the examined claims; with the compositions of pending claims containing tensioning polymers, oil, water and surfactant for treating or softening wrinkled skin.

*Response to Arguments*

29. Applicant's arguments filed 4/22/2010 have been fully considered but they are not persuasive.

30. Applicant argues the provisional obviousness rejection should be withdrawn because the examined application is an earlier filed application.

31. Response: But, the provisional obviousness type double patenting rejection is not the only rejection. Since the provisional obviousness type double patenting rejection is not the only rejection in the examined application, the rejection will continue to be made until the rejection is overcome as stated in MPEP 804 [R-5], I B, that "the "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications." As noted above, the provisional obviousness double patenting rejection is not the only rejection remaining in this examined application. Thus rejection is maintained and is not held in abeyance.

32. No claim is allowed.

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

34. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLESSING M. FUBARA whose telephone number is (571)272-0594. The examiner can normally be reached on Monday to Thursday from 7 a.m. to 5:30 p.m.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blessing M. Fubara/  
Primary Examiner, Art Unit 1618